UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1024
5 December 1990

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Fortieth session

SUMMARY RECORD OF THE 1024th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 1 November 1990, at 10 a.m.

Chairman: Mr. LALLAH

CONTENTS

Submission of reports by States parties under article 40 of the Covenant

Organizational and other matters (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.90-18235/2667B

The meeting was called to order at 10.20 a.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 3)

1. Mrs. KLEIN (Secretary of the Committee) drew the Committee's attention to an unnumbered document showing the status of reports pending consideration by the Committee. Sweden had been omitted from that document. The report concerned was Sweden's third periodic report due in 1989, which had been received on 30 October 1989. Since the document had been prepared, there had been a further ratification of the Second Optional Protocol relating to the abolition of the death penalty, bringing the number of ratifications to three: New Zealand, Portugal and Sweden.

2. The CHAIRMAN announced the Bureau's recommendation that the Committee should select the following reports for consideration at its next session: India, Jordan, Panama, Sri Lanka, Sweden and the United Kingdom. It further recommended that the reserve list should consist of Austria, Ecuador and Poland.

3. Mrs. HIGGINS suggested that it was unrealistic to list six countries for the following session since the United Kingdom alone, including the dependent territories, was likely to need five meetings in all, particularly in view of the many changes in Hong Kong. Six was considered to be the Committee's absolute limit in any event.

4. The CHAIRMAN said the Bureau had given some thought to the matter but had felt that a number of countries might fail to send representatives, as had happened at the present session. However, the number might be reduced to five if Jordan were added to the reserve list.

5. Mrs. HIGGINS said she was aware that Jordan's report had been due for some time, but felt that five was preferable in principle, not only because of the overloading problem but because of the plain fact that there was only so much Committee members could properly prepare for if they were to do their job thoroughly. Even five countries, given the dependent territories as well, amounted to an enormous amount of careful preparation.

6. Mr. POCAR, while agreeing that five or even six meetings might be required for the United Kingdom and the dependent territories, said that he would prefer to schedule only three meetings as usual for third periodic reports, because as a matter of principle the Committee should not make distinctions between countries. However, it might schedule for the same session matters that could be postponed, such as measures taken by the General Assembly or the submission of reports, and it could inform the United Kingdom delegation that an additional day or so might be needed.

7. The CHAIRMAN said he had been reminded by the Secretariat that Panama, whose report had been received three years previously, had stated that it would submit a supplementary report by the end of October 1990 but had not yet done so. As it was Panama's wish to have its report considered at the Committee's forty-first session in New York, it should be included on the list.

8. Mr. WAKO asked what the Bureau's position had been on the inclusion of Madagascar on the list. No African country had been put foward for the next session, and the Committee should try and include a country from each region as far as possible. Madagascar's report had been due in 1983, and given the various problems with both its first report and its communications, and the undertaking made at the Committee's previous session that the report would be forthcoming, the country perhaps deserved a prompt hearing.

9. The CHAIRMAN said the Bureau had considered Madagascar but had been informed that, as the report had only just been received, and in view of the many accompanying documents, the translation work could probably not be completed in all working languages in time.

10. Mrs. HIGGINS asked whether the Committee normally gave priority to reports in the order in which they were due or in the order in which they were received. Madagascar had clearly been due for consideration before Ecuador and had been received only a month later. If it was logistically feasible, therefore, she supported the proposal to give Madagascar priority over Ecuador. As she had stated on a number of previous occasions, the Committee should not seek to have a regional spread of countries on the list. It was very important for the work ethic of the Committee that it take reports in the order in which they were due and not manipulate that order in any way. States parties would then know that they would be called in as a matter of routine.

11. The CHAIRMAN said that, in the light of the Committee's outstanding commitments to certain countries and taking into account the views of members, he would take it that the list should consist of India, Panama, Sri Lanka, Sweden and the United Kingdom, with a reserve list consisting of Austria, Ecuador, Jordan, Madagascar and Poland.

12. It was so decided.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Methods of work of the Committee under article 40 of the Covenant

13. Mr. EL-SHAFEI (Chairman of the Working Group on Article 40) said that the Working Group had met prior to the Committee's fortieth session to review the possibility of modifying some of the Committee's procedures, as requested by the Committee at its thirty-ninth session. He drew attention to the unnumbered document containing the Working Group's recommendations which came under three main headings: preparation of lists of issues, special reports on states of emergency, and implementation of article 40, paragraph 4, of the Covenant.

14. The following recommendation was made on the preparation of lists of issues:

> "The Working Group recommends that, in order to facilitate the process of preparing lists of issues, individual members of the Working Group on Article 40 should henceforth be assigned, as from the time of appointment to the Working Group, special responsibilities relating to the drafting of one or more of the lists of issues that are to be prepared for the Committee's next session. Members should be provided,

READEX

as soon as possible, with all relevant background materials concerning the country or countries in question, including previous reports, summary records, analytical studies and other United Nations studies or reports that may be relevant, as well as the draft lists of issues prepared, as at present, by the Secretariat. Additionally, non-governmental organizations that wished to contribute information should be urged to send such information to the Secretariat as far in advance of the session as possible for onward transmission to the appropriate member of the Working Group. The member concerned should, in the light of all available information and as may be appropriate, revise the draft list or lists that had been prepared by the Secretariat and transmit the same to the Centre for timely translation and submission to the Working Group."

The advantage of that procedure was that the assigned members would be in a position to concentrate fully on the preparation of a well-balanced, comprehensive and objective list of issues, which would be the subject of dialogue at the Committee's meetings.

15. Mr. ANDO asked how soon the amended list of issues should be sent to the Secretariat for timely translation for the Working Group.

16. The CHAIRMAN replied that the Secretariat had suggested that the list should be sent to it no later than two weeks prior to the session of the Working Group.

17. Mr. ANDO said that in that case assigned members should receive all the relevant information, including the analytical studies, no later than one month after the previous session. He wondered whether that was possible from the Secretariat's point of view.

18. The CHAIRMAN said that while the Secretariat was willing to do its best, it might not always be possible to provide all the relevant material within one month of the closure of a session, but it would be provided in the shortest possible time.

19. Mrs. HIGGINS said that while she was not opposed to the Working Group's proposal, it did entail a certain amount of inter-sessional work which should not be allowed to deter Committee members from volunteering to participate in the Committee's working groups. What had been so satisfactory about the working groups, particularly over the past two years, had been the wide spread of participation in them. With different members having different commitments between sessions, it would be extremely unfortunate if that spread and input were lost because some members felt that they did not have enough time to take part.

20. The Committee might also usefully give some thought to whether there would be a full week's work for the groups to do and, if not, what the consequences might be. The listing work was normally done during that week, but under the new proposal it would be a matter of other members agreeing with work already done, which was a much shorter task.

21. The CHAIRMAN said that while Mrs. Higgins' points were logical, there would be much value in the Working Group examining work already prepared by an individual member. He had always believed that the collegiate approach built into the Committee's approach made for uniformity and effectiveness. Furthermore, he was reluctant to reduce the time acquired through so much effort. There was always work to be done during that week, particularly with communications.

22. Mr. EL-SHAFEI said that when discussing the topic, the Working Group had certainly had in mind the possibility that one or more members would find it difficult to do their work prior to a session because of other commitments. That problem could be solved by individuals, who knew they would have the time, volunteering their services. The only advantage of the previous system, with a member from a country or region from which a report originated had been that that member would probably be in a position to contribute more. Since the Working Group was usually composed of four members, very few of them would have to take on more than one report, and the problem could be solved between themselves. As far as the length of Working Group sessions was concerned, it should not be forgotten that the Group had other functions, such as the examination of draft general observations and, under the present proposals, dealing with the work of "country rapporteurs". The five working days allotted to the Group would still be needed.

23. Mr. WAKO said that, as a member of the Working Group, he did not consider it necessary to reduce the time the Group had to spend on the lists of issues. The method proposed should improve the quality of the issues, particularly in view of the way the Group's time was used at present. The proposed new method would enable the Group to examine issues in greater depth and expound them clearly at meetings. It did not absolve the other members of responsibility to acquaint themselves with all the relevant documents in order to satisfy themselves that the issues as drafted were the correct ones. Under the old system, issues had sometimes been less comprehensive than they might have been; the present proposal was intended to close that loophole as far as possible. The extra work would be unlikely to discourage members of the Committee from serving on the working group as it would be spread over a longish period and would not take up too much time. The Committee was in any event composed of people who were determined to put as much effort as possible into ensuring its proper functioning.

24. The CHAIRMAN invited the Secretariat to respond to some of the issues raised.

25. Mr. HOUSHMAND (Representative of the Secretary-General) reminded the Committee that Mr. Ando had asked how soon the Secretariat would be able to prepare the analytical studies and draft lists of issues and transmit them to the designated Working Group member concerned, and how soon the work prepared by the "country rapporteur" should be returned to the Secretariat for translation in order to be made available to the Working Group when it was convened prior to the Committee's session. Mrs. Higgins had raised some serious substantive and logistical problems, on which the Secretariat might be unable to provide the relevant information rapidly, particularly with the Committee holding three sessions a year.

26. The inter-sessional period was sometimes very short. It might, however, be possible to envisage a happy medium. Under the present system, when Working Group members arrived at the venue for the session, the Secretariat made available to them the background material, including previous reports, summary records, the analytical studies and draft lists of issues prepared during the interim period. Individual members of the Working Group then acted as country rapporteurs, each taking responsibility for one or two State party reports. That system might be modified in the following manner: the Committee, when designating members of the Working Group for the forthcoming session, could also assign country rapporteurs for the reports scheduled for consideration; the Secretariat would make available as early as possible to the member concerned the initial report, the summary records of the discussion of that report, any necessary background material, the Secretariat's draft list of issues, any relevant information available from the United Nations and, if possible, submissions from NGOs, on the understanding that the member concerned would be expected before the following session to familiarize himself with developments by means of that documentation and revise the Secretariat's draft list of issues as appropriate. When the Working Group convened, it would finalize and approve the draft list of issues for transmission to States. Any member could take home with him any material available at the end of a particular session and the Secretariat would transmit to him promptly any material not available at that time.

27. The CHAIRMAN observed that the analytical studies were merely internal documents, but the Committee had worked hard to ensure that the Secretariat was provided with the staff needed to prepare them. Without such staff, it would be difficult to prepare proper lists, which formed the basis of all the questions asked and of the progress accomplished; their enormous importance had possibly been underestimated.

28. NGOs were among the most valuable sources of information. They helped the Committee in its efforts to circumscribe the issues and choose those that were most material, and it would be a great loss if such contributions could not be made use of in drawing up the lists of issues. Information from NGOs could probably not be expected to reach the Committee much before the beginning of the week in which the Working Group met, but its use by the member responsible for preparing the list of issues would fit in well with Mr. Houshmand's proposal.

29. Ms. CHANET said that she had been a member of both working groups of the Committee and therefore knew something about the distribution of work between them. She supported the recommendation of the Working Group on Article 40 that individual members should henceforth be assigned special responsibilities for preparing one or more lists of issues, and was also in favour of Mr. Houshmand's proposal. More work rather than less would result from the Working Group's recommendations, since the information received would be more weighty. The country rapporteur would submit to the Working Group any information he had received from the Secretariat and NGOs, as well as information which he himself had been able to collect between sessions, and the discussions would be far more intensive than hitherto. The existing practice with the two working groups should continue. To have a single Group working on communications in the morning and on article 40 in the afternoon would be unsatisfactory, while to have one Group meeting for a week and another for only a few days would result in imbalance. It was essential to have as much time available as possible.

30. Mr. PRADO VALLEJO said that he found the Working Group's text generally acceptable. He shared the views expressed by the Chairman and commended Mr. Houshmand for his constructive ideas. He shared Mrs. Higgins' concern, however, that a member designated to deal with a particular list of issues might be unable to do so for various professional or personal reasons. The Committee should consider what would be done in such a situation. He suggested that the member responsible for preparing a particular list should be appointed from within the region to which the country concerned belonged, since he would be more familiar than others with the regional background.

31. The preparation of the lists of issues had, in the past, been the joint task of the entire Working Group based on the document provided by the Secretariat. During the Committee's consideration of the relevant report, however, members had often raised questions not covered by the list of issues. He suggested that all the documentation should be sent to members of the Working Group in advance, or preferably made available to them at the end of the preceding session, so that they could study it and send their comments on the list prepared by the Secretariat to the member responsible for revising that list as necessary.

32. Mr. AGUILAR URBINA supported Mr. Prado Vallejo's suggestion in principle but shared Mrs. Higgins' concern that members might hesitate to serve on the Working Group in such circumstances. It would, for example, be a formidable task for all the members of the Working Group to study all the Committee documents related to the first and second reports of the United Kingdom, together with all the relevant documentation from the United Nations and NGOs. The relevant State party report should, however, be made available in advance to all members of the Committee and studied in particular by members of the Working Group. Committee members might transmit to the "country rapporteur" any questions they considered appropriate, thus saving the Committee's time when the relevant report came up for consideration. In the case of Canada and Spain, an entire meeting had had to be devoted to the consideration of additional questions.

33. Mr. POCAR said he found the Working Group's proposal acceptable and well balanced. A number of problems arose concerning the responsibilities of Committee members in general and the additional commitments of members who would be working during the inter-sessional period. Committee members who agreed to serve in the Working Group were obliged to do their utmost to participate in its work, but there was always a reserve list, which had frequently been drawn upon. If members responsible for preparing preliminary lists of issues failed to attend the Working Group, that could be detrimental to its success. The Working Group's proposal should remain unchanged but should be applied only experimentally in the first instance. The results could then be assessed at the next session. He was not certain whether the new procedure would result in more intensive discussion in the Working Group or whether the lists of issues prepared by the individual members would merely be rubber-stamped. Although information from NGOs frequently arrived at the last moment, it was possible that they would endeavour to make it available earlier in the future.

34. Some questions of principle had been raised, including Mr. Prado Vallejo's suggestion that the list should be prepared by a member from a region in which the country concerned was situated. He was not certain that the Committee should agree to that course.

35. If any member of the Working Group wished to receive all the background documentation on a particular country at the end of the preceding session, he should be free to do so and to transmit his comments to the member responsible for the list concerned, but he should not be compelled to do so. The Committee might adopt the Working Group's recommendation on the understanding that it could reconsider it after the next session in order to make any necessary changes, but it should avoid taking decisions of principle for the time being, except on the principle that individual members of the Working Group should be responsible for preparing one or more lists of issues. The final responsibility for the lists lay with the Working Group as a whole, and with the Committee when it came to approve them, and not with the individual members.

36. Mr. DIMITRIJEVIC shared Mr. Pocar's view that the Committee should apply the Working Group's recommendation experimentally before taking a final decision. A number of fourth periodic reports would shortly come up for consideration, and bearing in mind that there were now 93 signatories to the Covenant, the Committee's work-load was likely to increase tremendously. It had performed well so far because countries had been rather tardy in preparing their reports and there had been adequate time to consider those submitted. If all countries submitted their reports on time in the future, the Committee would be under considerable pressure. If the lists of issues were presented well in advance and were comprehensive enough to avoid the raising of additional questions, it might be possible to shorten the discussions.

37. The first draft of the list of issues was prepared by the Secretariat on the basis of the analytical study, but since the Secretariat had to preserve its impartiality, it was unable to include provocative questions, which members of the Committee would be free to raise. On the first day of its session, the Working Group had before it the first draft of the list of issues submitted by the Secretariat, together with a great deal of recently received material, including important contributions from NGOs. It would be a great advantage for the list to be prepared in advance by an individual member who would have all the relevant material at his disposal and could study the historical background of the country and its Constitution and laws. The Committee should avoid disclosing to NGOs and pressure groups at too early a stage the name of the person responsible for the list since he was likely to be subject to pressure on their part. It would be sufficient to inform them that the Committee was to consider the report of a particular country at its next session and to request them to send any relevant information to the Secretariat well in advance in order to enable the list of issues to be prepared.

38. He agreed with Mr. Pocar's suggestion that material should be sent to any member of the Working Group who wished to receive it and to make suggestions, but they should be under no obligation to do so.

39. As to Mr. Prado Vallejo's suggestion that the member responsible for a particular list of issues should be from the region in which the country concerned was situated, it was sometimes possible for a person from outside the region to see the situation more clearly than a person from within it. For example, in the former Yugoslav Constitution there had been a provision that the Communist Party was the avant-garde party leading the country to a

better future, and during the Committee's consideration of the Yugoslav report, Mr. Cooray had asked whether, if he wished to join the Yugoslav Communist Party and his request was refused, he could apply to a court to be admitted to that Party. As a person from the region concerned, that question had never previously occurred to him, but local people to whom he had mentioned it had come to realize that it should be normal for court protection to be provided in such a case. That was a question that could only have been raised by someone from outside the region. A further example was that many people who were endeavouring to understand developments in Eastern Europe were observing how the post-dictatorship problems in Latin American countries had been solved. The assignment of individual members of the Working Group to be responsible for particular lists of issues should be left to the Group itself.

40. Mr. FODOR observed that the new system would preserve all the good points of the earlier system, with the added advantage of in-depth consideration by one member of the Working Group.

41. Mrs. HIGGINS said that she shared the doubts expressed by other members about Mr. Prado Vallejo's suggestion. In some cases, a member from the same region might be the most appropriate person to consider a State party's report, but other factors, such as a member's professional interests, might be equally important. Members might also be more open to political pressure if they dealt with reports from their own region. A member who was dealing with a particular report should take note of comments made by other members of the Working Group, but should not rely on receiving such comments; otherwise, all the members of the Working Group would be commenting on all the reports, and the whole point of the exercise would be lost.

42. It was essential that the Committee should receive information from NGOs more quickly than it did at present. Under the current system, the Secretariat and the Working Group drew up a list of issues for each country, and members then added their own questions, based on their individual research and information supplied by NGOs. The new system would combine those two stages, so it was essential to have the information as quickly as possible. Perhaps the Committee could ask the NGOs to supply their information more promptly.

43. She agreed with Mr. Houshmand that a "happy medium" might be found; it would not be too far removed from the present system. However, the Committee must realize that its dialogue with States parties would change as a result of the new system; all the questions which members had previously put to the States parties orally, because they had considered them too sensitive to put in writing, would henceforth appear in black and white in the list of issues.

44. Mr. ANDO said that he supported the proposed recommendation, but understood the doubts expressed by some members about Mr. Prado Vallejo's suggestion. The Committee should bear those considerations in mind when choosing a member to deal with each report at the end of the session. He agreed with Mrs. Higgins that it was important that NGOs should submit their information as soon as possible, although he could see that it might be difficult for them to do so. Even if the information came late, members could always make use of it in their oral questions. He felt that the procedure recommended by the Working Group should be adopted for a trial period.

45. The CHAIRMAN, summing up the discussion, said that all members of the Committee seemed to agree on the general spirit of the recommendation. It seemed clear that, although one member would consider a particular report in detail, the final list of issues would be drawn up by the Working Group as a whole. Mr. Prado Vallejo's suggestion had not been endorsed by other members, and he himself felt that there was no need to give a regional bias to the Covenant, which was a universal instrument. It also seemed to be agreed that all the members of the Working Group should receive information relating to all the reports, but they need not comment on every one, since the point of the exercise was to distribute the work-load. Finally, it had been suggested that the new system should be adopted for a trial period.

46. The recommendation by the Working Group on the preparation of lists of issues was adopted.

47. The CHAIRMAN invited the Committee to consider the following recommendation on special reports on states of emergency drawn up by the Working Group on Article 40:

> "The Working Group recalled that States parties are obliged, pursuant to article 4 (3) of the Covenant, to inform other States parties, through the Secretary-General, of the provisions of the Covenant from which they have derogated during a state of emergency. At the same time, the Working Group noted that article 40 (1) (b) of the Covenant empowers the Committee to request reports from States parties whenever it wishes to do so. In the view of the Working Group, the question as to whether a supplementary report concerning a state of emergency was required could not be decided in the abstract, but only on a case-by-case basis. To facilitate the consideration by the Committee of the need for such a supplementary report, the Secretariat should accordingly submit to the Committee at each of its sessions a list showing any state of emergency that may have been notified to the Secretary-General since the Committee's previous session."

48. Mr. EL-SHAFEI (Chairman of the Working Group on Article 40) said that, under the procedure proposed by the Working Group, the Secretariat would provide the Committee with a list of States parties which had informed the Secretary-General that they had declared a state of emergency. The Committee would then decide whether to ask the State party concerned to report on its derogation of certain rights under that state of emergency. The procedure might also be used in special situations, where no formal state of emergency had been declared but which might have human rights implications.

49. Mr. MYULLERSON said that he had some doubts about the recommendation which, unlike the recommendation on the preparation of lists of issues, was not a purely internal matter but concerned the Committee's relations with States parties. The Committee had always maintained that all States parties should be treated equally, but the new proposal would require certain States parties to submit a supplementary report. It might be useful to have such a report, but it might not be politically advisable to request one. It would be even worse if some States which had declared a state of emergency were asked to prepare a supplementary report, while others were not. And

there was another problem: States sometimes adopted emergency measures without formally declaring a state of emergency or notifying the Secretary-General. He could not see how the Committee could ask for a report on a de facto state of emergency which the State party refused to acknowledge.

50. Mr. AGUILAR URBINA said that he, too, was concerned about de facto states of emergency. There had been two or three cases in his own region, Latin America, where a formal state of emergency had never been declared. Yet it was essential for the Committee to consider de facto states of emergency, because it was in just such a situation that serious human rights violations were liable to occur. Moreover, many of the countries which gave most cause for concern had requested that consideration of their periodic reports should be postponed.

51. Mr. POCAR said that it was important for the Committee to improve its monitoring of states of emergency, since human rights violations were more likely to take place in such a situation. He felt, however, that the Committee should treat all States parties alike and base its request for a supplementary report on some objective criterion. The most obvious criterion was the formal notification of a state of emergency; in that case however, the Committee must ask for a report from all States parties, without exception, although States which were due to submit a periodic report in the near future should be allowed to include the information on the state of emergency in that report. However, States parties might be less willing to make the formal declaration of a state of emergency if they knew that they would then have to submit an extra report to the Committee. The Committee should therefore try to find some other criterion, which would also cover a de facto state of emergency.

52. Mrs. HIGGINS said she doubted whether the Committee should ask for a supplementary report at all. It was difficult to ask for a report in cases where a de facto state of emergency existed, but had not been formally declared; in some cases, States parties might acknowledge the state of emergency and submit a report, but without giving sufficient information about possible infringements of human rights. Moreover, it was difficult to see what use the Committee could make of a report; it might decide to consider the States party's next periodic report a little earlier than it would otherwise have done, but it could not act quickly, despite the urgency of the issues involved.

53. She could not think of any satisfactory solution to the problem. However, one possibility might be to ask the Secretary-General, or his representative, to remind States parties where necessary that they had undertaken to inform him and the other parties to the Covenant if they declared a state of emergency. She felt that article 4 (3) could be interpreted to give the Committee the authority to do so. She agreed with Mr. Pocar that States would simply fail to notify the Secretary-General of a state of emergency if they knew that they would then be obliged to submit a report, and it was understandable that the preparation of a report for the Committee would hardly be high on their list of priorities at such a time.

54. One small improvement which would make members' work much easier would be to ensure that they received up-to-date information about States which had derogated from any of the rights enshrined in the Covenant. At present,

members only dealt with such derogations during the consideration of the State party's periodic reports; perhaps the Committee might find time to update the list of derogations at every session and discuss informally whether it needed to take any further action.

55. The CHAIRMAN observed that the Committee had already been faced with the problem, particularly 10 years earlier in connection with the state of emergency in Poland. To interpret article 40 of the Covenant as entitling the Committee to deal with exceptional situations only within the normal reporting procedure did not provide a satisfactory solution where a State party failed to declare a state of emergency, or where there was a permanent state of emergency, a regional state of emergency, or conditions tantamount to a state of emergency. The Committee needed to find a way of dealing with those situations. At the same time, it was necessary to look at the matter from the point of view of the State party. Exceptional situations often evolved rapidly and were naturally disruptive; a report compiled in those circumstances might not accurately reflect the current situation by the time it was delivered to the Committee.

56. The suggestion that the Committee should keep itself regularly informed of declarations of emergency and derogations from obligations under the Covenant was a constructive and practical one, which might help it to decide which reports should be given priority consideration.

57. Mr. WENNERGREN said that the Working Group's recommendation gave the impression that the Committee might, under article 40, request a report from a State party for any reason it chose. A distinction should therefore be drawn in the recommendation between the Committee's right, under article 40, to ask for a report on measures which gave effect to the rights recognized in the Covenant, and its right, under article 4 or other articles, to ask for special reports. He suggested adding to the recommendation a sentence explaining that the Committee might request a report from a State party in connection with a decision on a state of emergency which had either been notified to the Secretary-General or was publicly known. However, there did not seem to be any ground on which the Committee could request a report concerning a de facto state of emergency.

58. Mr. PRADO VALLEJO noted that the Committee had so far refrained from taking a decision on the matter because of its complexity. He agreed with the course suggested by Mrs. Higgins, namely, to study the problem further and adopt a resolution at a later date if necessary.

59. In connection with Mr. Wennergren's comments, he pointed out that the Committee had often requested supplementary reports under article 40 (b). Since the Committee was entitled to request reports from States parties on measures which gave effect to rights under the Covenant, there was all the more reason to ask for reports when those rights had been suspended, as in a state of emergency. Thus, both article 4 and article 40 justified requests for reports in the appropriate circumstances.

60. Failure by a State party to notify the Committee of an exceptional situation was a serious problem. In cases where derogations or a state of emergency existed and were a matter of public knowledge, the Committee should

ask for a special report, even if the situation had not been declared. The matter was a delicate and complex one, with far-reaching implications, and the Committee should not make a hasty decision.

61. Ms. CHANET observed that the Working Group's proposals were based on a discussion, reported in document CCPR/C/SR.1003, and notably paragraphs 18 and 40, where it was held that reports should be drawn up under article 4 of the Covenant, a point of view which had encountered no objection. The statement in the recommendation to the effect that the decision to request a supplementary report concerning a state of emergency could not be taken in the abstract should be understood to mean not that a report should necessarily be requested in each particular case, but merely that the time was not ripe to take a decision that was generally applicable, and the current discussion further confirmed that fact.

62. Since there was a consensus on the last sentence of the recommendation, she suggested that the recommendation should be confined to the point contained in that sentence. The updated lists of states of emergency could be used by the Committee while it reflected on further steps, such as requesting special reports or appointing a member to compile information on situations that aroused concern.

63. Mr. ANDO pointed out that a state of emergency could result not only from internal disturbances or a military coup, for example, but also from circumstances such as a natural disaster or a foreign invasion, both of which had serious consequences for the enjoyment of human rights. He wondered whether article 41, which had never been invoked, might offer a better solution in some of those cases. He stressed the need to take all possible situations into account and cautioned against too narrow a definition of a state of emergency.

64. Under article 40 (b), the Committee should ask for supplementary reports wherever human rights concerns existed - not just in connection with article 4, but in any other situation where the enjoyment of human rights was curtailed.

65. Mr. EL-SHAFEI said that the Working Group's recommendation was based on an earlier exchange of views by Committee members on ways of improving working procedures and that the Working Group's mandate was to examine states of emergency in the light of article 4. The Committee was empowered to request information only from States which were parties to United Nations instruments. In conformity with a 1985 resolution of the Economic and Social Council, a rapporteur for the Sub-Commission on Prevention of Discrimination and Protection of Minorities already produced an annual list of States where a state of emergency existed; the Committee should avail itself of that list for the purpose indicated in the recommendation.

66. As to the problem of a de facto state of emergency, the Committee appeared divided. Some members considered that it was extremely important to request a supplementary report in such cases, but he doubted whether it fell within the Committee's mandate to do so. Perhaps that action could be carried out by some other United Nations body. Since the recommendation needed to be redrafted to reflect the points made by various members, a decision on the matter should be postponed.

67. Mr. DIMITRIJEVIC cautioned against a hasty decision which could be counter-productive. It had become apparent that countries which declared a state of emergency generally pursued more ethical policies than those that did not. By summoning only countries which had the decency to notify the Secretary-General of a state of emergency, the Committee was in danger of making a serious error and even discouraging certain countries from declaring a state of emergency. While it was true that article 40 entitled the Committee to request supplementary reports, it would be inadvisable to alter the normal procedure whereby States appeared before the Committee without a priori being accused or suspected of human rights violations.

68. Agreeing with Mr. El-Shafei's suggestion that a final decision should not be taken at present, he said there seemed to be a consensus that at its next session the Committee should receive a complete list of derogations and notifications. As Mr. Ando had said, it might do more harm than good to request a report from a country that was in the middle of a crisis; the Committee should merely urge that countries listed as having a state of emergency or having made derogations from their obligations under the Covenant should submit their reports at the appointed time and no later.

69. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to be provided on a regular basis with an updated list of states of emergency and derogations and would in the meantime schedule the submission of reports in the usual manner.

70. It was so decided.

The meeting rose at 12.50 p.m.

UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1025
20 November 1990

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE

Fortieth session

SUMMARY RECORD OF THE 1025th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 1 November 1990, at 3 p.m.

Chairman: Mr. LALLAH

CONTENTS

Submission of reports by States parties under article 40 of the Covenant (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.90-18240/8423A

The meeting was called to order at 3.30 p.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 3) (continued) (M/CCPR/90/43, CCPR/C/40/CRP.1)

1. The CHAIRMAN said he understood that the draft general comment on article 7 of the Covenant (CCPR/C/40/CRP.1), which the Committee members not belonging to the Working Group had before them for the first time, had been amended by Ms. Chanet at the request of the Chairman/Rapporteur of the Working Group responsible for general comments. He suggested that the Working Group should hold a meeting, in the presence of the other Committee members, to study the draft recommendation and amendments thereto.

2. It was so decided.

The meeting rose at 3.50 p.m.